

Thorup 1999-0467A

#### REMARKS

Claims 1-12, 21, and 23-27 were rejected under 35 USC 101 as being non-statutory. The Examiner asserts that the claims are directed to abstract ideas, and that there is no hardware embodiment in the claims or in the specification. The Examiner admits that applicants' method achieves "a useful result" but apparently the Examiner believes that this is insufficient because it "is based on an abstract idea, best neighbor approach." The Examiner also states that the "best neighbor approach is not sufficient to enable a person skilled in the art to perform the features and produce repeatable results."

Applicants respectfully traverse and, moreover, applicants respectfully submit that the assertion of a disclosure that is not "sufficient to enable a person skilled in the art to perform the features and produce repeatable results" cannot support a rejection under 35 USC 101. Such an assertion ought to trigger a 35 USC 112, first paragraph, rejection, and not a 35 USC 101 rejection. This assertion is addressed below in connection with the 35 USC 112, first paragraph rejection that was indeed lodged by the Examiner.

As for the 35 USC 101 issue, applicants respectfully submit that controlling operation of a physical arrangement such a network is not unlike controlling the operation of a rubber curing machine (*Diamond v. Dier*), and such controlling is definitely statutory subject matter. In claim 1, the second step of the method clearly specifies a physical action that relates to the operation of a network and, therefore, it is respectfully submitted that claim 1 is clearly statutory. Nevertheless, in order to make the claim clearer, it is amended herein to define in more detail the fact that the weights are associated with network links (more explicit association of numbers to physical elements), that the weights are obtained by having a starting set of numbers and modifying that set of numbers, and that the modifying is iterative. Independent method claim 21 is similar to claim 1 relative to the 35 USC 101 issue, and independent apparatus claim 13 specifies a device for computing weights that are associated with links of a network, and for controlling traffic flow in at least one node of the network. Apparatus claims are clearly statutory, and there is absolutely no preemption of any mathematical algorithm in the subject claim.

Applicants respectfully submit, therefore, that all of the claims define statutory subject matter in compliance with 35 USC 101.

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Claims 1-19, 21, 23-27 were rejected under 35 USC 112, first paragraph. The Examiner asserts that the best neighbor approach is defined, but not in enough detail to allow a person skilled in the art to make and/or use the invention. The Examiner also asserts that "the same issues revolve around the multi-dimensional cost function as the Examiner cannot ascertain the necessary information for this limitation." Applicants respectfully traverse, and in support of the traverse a 37 CFR 1.132 Declaration is respectfully submitted. It is believed that the Declaration overcomes the rejection.

Claims 1-19, 21, and 24-26 were rejected on the ground of nonstatutory double patenting over claims 1-20 of US Patent 6,829,220. A terminal disclaimer is enclosed herewith to overcome the rejection.

In light of the above amendments and remarks, applicants respectfully submit that all of the Examiner's rejections have been overcome. Reconsideration and allowance are respectfully solicited.

Respectfully,  
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